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U.S. DISTRICT COURT E.D.N.Y
★ MAY 24 2010 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MANUEL ARBOLEDA,

Plaintiff,

-against-

THE CITY OF NEW YORK,
JUSTIN CRACCHIOLA and JOHN DOE,

Defendants.

---x

COMPLAINT

JURY TRIAL DEMANDED

VITALIANO, J.

LEVY, M.J.

Plaintiff, MANUEL ARBOLEDA, by and through his attorneys, **THE LAW OFFICE OF SCOTT G. CERBIN, PLLC**, complaining of the defendants herein, respectfully shows the Court and alleges:

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the defendants' violation of his rights secured by the Civil Rights Act of 1871, 42 U.S.C. §§ 1981 and1983; by the United States Constitution, including its Fourth and Fourteenth Amendments, and by the laws and Constitution of the State of New York. The plaintiff seeks damages, both compensatory and punitive, affirmative equitable relief, an award of costs and attorney's fees, and such other and further relief as this court deems just and equitable.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981 and 1983.

3. Venue herein is proper for the United States District Court for the Eastern District of New York under 28 U.S.C. § 1391 (a), (b) and (c).

PARTIES

4. Plaintiff MANUEL ARBOLEDA is 21 years old and at all times hereinafter mentioned was a citizen of the United States residing in the State of New York, County of Kings. He is of Puerto Rican ancestry.

5. Defendant THE CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. Defendant THE CITY OF NEW YORK is and was at all times relevant herein a municipal entity created and authorized under the laws of the State of New York. It is authorized to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant THE CITY OF NEW YORK assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by the New York City Police Department.

7. Defendants CRACCHIOLA and DOE are and were at all times relevant herein duly appointed and acting officers, servants, employees and agents of THE CITY OF NEW YORK and/or the New York City Police Department, a municipal agency of defendant THE CITY OF NEW YORK. Defendants CRACCHIOLA and DOE are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as officers, agents, servants, and employees of defendant THE CITY OF NEW YORK, were acting for, and on behalf of, and with the power and authority vested in them by THE CITY OF NEW YORK and the New York City Police Department, and were otherwise performing and engaging in conduct incidental to the

performance of their lawful function in the course of their duties. Defendants CRACCHIOLA and DOE are sued individually.

STATEMENT OF FACTS

8. On May 26, 2009 in the County of Kings defendants CRACCHIOLA and DOE approached Plaintiff Manuel Arboleda and an acquaintance Eiad Elder. Cracchiola had previously searched and harassed Arboleda without probable cause. Finding no reason to arrest Arboleda after the illegal stop and frisk – Craccchiola turned to Mr. Elder. Upon unlawfully searching Elder's pants pocket Cracchiola recovered a small amount of marihuana. Cracchiola then arrested both Elder and Arboleda for the petty offense of criminal possession of Marijuana in the Fifth Degree; NY Penal Law § 221.10;(1) and the non-criminal violation of Unlawful Possession of Marihuana; NY Penal Law § 221.05.

9. In his sworn supporting deposition Cracchiola specifically stated that he recovered said marihuana from "co-defendant's ELDER EIAD K09650268 (arrest no.) pants pocket by A/O". Thus Cracchiola's own sworn statement concedes that there was no probable cause to arrest Arboleda – and that there was no basis to charge either defendant with 221.10(1) (which specifically requires that marihuana be burning in a public place). Stated differently, Cracchiola affirms that he falsely arrested Arboleda on both charges; and Elder on the 221.05 charge.

10. At the time of the above mentioned false arrest Arboleda was at liberty on a bail bond pursuant to a DWI case which was then pending in Kings County Criminal Court. As a result of the false arrest – Arboleda's bail was revoked by the bail bondsman and Arboleda was remanded for approximately six days. The marihuana charge was

Adjourned in Contemplation of Dismissal pursuant to NY CPL § 170.56 when Arboleda plead guilty to the DWI charge on July 2, 2009.

AS AND FOR A FIRST CAUSE OF ACTION
(Deprivation of federal civil rights under the United States Constitution and 42 U.S.C §§ 1981 and 1983)

11. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

12. By their conduct and actions in arresting, imprisoning, failing to intercede on behalf of plaintiff and in failing to protect him from the unjustified and unconstitutional treatment he received at the hands of other defendants, defendants CRACCHIOLA and DOE, acting with animus, and under color of law and without lawful justification, intentionally, maliciously, and with deliberate indifference to or a reckless disregard for the natural and probable consequences of his acts, caused injury and damage in violation of the plaintiff's constitutional rights as guaranteed under 42 U.S.C. §§ 1981 and 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.

13. As a result of the foregoing, plaintiff was deprived of his liberty, suffered great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A SECOND CAUSE OF ACTION
(Liability of Defendant the City of New York for Constitutional Violations)

14. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

15. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through defendants CRACCHIOLA

and DOE had de facto policies, practices, customs and usages which were a direct and proximate cause of the unconstitutional conduct alleged herein.

16. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through defendants CRACCHIOLA and DOE had de facto policies, practices, customs and usages of failing to properly train, screen, supervise or discipline employees and police officers, and of failing to inform the individual defendants' supervisors of their need to train, screen, supervise or discipline said defendant. The policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

17. As a result of the foregoing, plaintiff was deprived of his liberty, suffered great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A THIRD CAUSE OF ACTION
(Intentional infliction of emotional harm)

18. Plaintiff repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

19. Due to CRACCHIOLA'S campaign of harassment plaintiff is now afraid to leave his house and believes that CRACCHIOLA or his colleagues will assault and arrest plaintiff if their paths should cross again.

20. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific economic injury, psychological injury and emotional distress, great humiliation, costs and expenses, and was otherwise damaged and injured.

WHEREFORE, plaintiff demands the following relief jointly and severally against all of the defendants:

a. Compensatory damages in the amount of $100,000.00

b. Punitive damages in the amount of $300,000.00

c. Costs and interest and attorneys fees.

d. Such other further relief as this court may deem appropriate and equitable.

Dated: Brooklyn, New York
May 21, 2010

Yours, etc.,

SCOTT G. CERBIN, PLLC
Counsel for the Plaintiff

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